

SENATE BILL No. 178

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-21; IC 27-4-1-4.

Synopsis: Insurer use of credit information. Imposes certain requirements and restrictions concerning the use of credit information in the underwriting of property and casualty insurance. Excludes commercial lines of insurance from the requirements and restrictions. Makes a violation of the requirements and restrictions an unfair and deceptive act and practice in the business of insurance.

Effective: July 1, 2003.

Paul

January 7, 2003, read first time and referred to Committee on Insurance and Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 178

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 21. Credit Information in Property and Casualty**
5 **Insurance**

6 **Sec. 1.** As used in this chapter, "applicant" means an individual
7 who applies for a policy of property and casualty insurance.

8 **Sec. 2.** As used in this chapter, "commissioner" refers to the
9 commissioner of the department.

10 **Sec. 3.** As used in this chapter, "credit information" means
11 credit related information obtained through a review of a credit
12 history, credit report, or credit score or on an application for a
13 policy of property and casualty insurance.

14 **Sec. 4.** As used in this chapter, "credit score" means a number
15 or rating derived through a credit scoring methodology.

16 **Sec. 5.** As used in this chapter, "credit scoring methodology"
17 means the particular algorithm, computer model, or other method



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used by an insurer to reduce to a numerical rating for use in the insurance underwriting process certain credit history data contained in an individual's credit report.

Sec. 6. As used in this chapter, "department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 7. As used in this chapter, "insured" means an individual who is entitled to coverage under a policy of property and casualty insurance.

Sec. 8. As used in this chapter, "insurer" means a person that:

- (1) is described in IC 27-1-2-3(x); and
- (2) issues a policy of property and casualty insurance.

Sec. 9. As used in this chapter, "property and casualty insurance" means one (1) or more of the kinds of insurance described in Class 2 and Class 3 of IC 27-1-5-1.

Sec. 10. (a) This chapter applies to an individual policy of property and casualty insurance.

(b) This chapter does not apply to a commercial line of insurance.

Sec. 11. (a) An insurer may not, based solely on credit information, refuse to issue, refuse to renew, or cancel a policy of property and casualty insurance.

(b) An insurer does not violate subsection (a) if the insurer offers to provide continuous coverage to an insured under a policy of property and casualty insurance underwritten:

- (1) by an affiliate; or
- (2) in a different rating class;

of the insurer.

Sec. 12. If the score of an insured or applicant is adversely affected or cannot be generated because the credit history of the insured or applicant is insufficient, an insurer shall:

- (1) use actuarially justified credit related underwriting or rating criteria that have been filed with the commissioner;
- (2) apply underwriting or rating criteria to the insured or applicant as if the insured or applicant had a neutral credit history, as defined in the insurer's underwriting guidelines or rate making standards, unless otherwise actuarially justified; or
- (3) exclude the use of credit as a factor in the underwriting or rating process.

Sec. 13. (a) If credit information is used in addition to other criteria as a basis for a refusal to issue, refusal to renew, cancellation, or rating of a policy of property and casualty

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1 insurance, the insurer shall provide notice to the insured or
 2 applicant of its use as a basis for the refusal to issue, refusal to
 3 renew, cancellation, or rating of the policy of property and casualty
 4 insurance, according to the federal Fair Credit Reporting Act (15
 5 U.S.C. 1681 et seq.).

6 (b) An insured or applicant may, not more than ninety (90) days
 7 after the insured or applicant receives the notice required under
 8 subsection (a), request in writing from the insurer an explanation
 9 of the most significant reasons for the credit score result, including
 10 the principal factors involved in the refusal to issue, refusal to
 11 renew, cancellation, or rating of the policy of property and casualty
 12 insurance.

13 (c) Not more than twenty-one (21) business days after an insurer
 14 receives a request under subsection (b):

15 (1) the insurer; or

16 (2) a third party that:

17 (A) possesses the information necessary to provide an
 18 explanation requested under subsection (b); and

19 (B) is directed by the insurer to provide the requested
 20 explanation;

21 shall provide in writing to the insured or applicant the requested
 22 explanation.

23 (d) If an insurer, in the notice provided under subsection (a),
 24 provided the explanation of the principal factors requested under
 25 subsection (b), the insurer has met the requirement of subsection
 26 (c).

27 Sec. 14. (a) The commissioner may request from an insurer that
 28 uses a credit score:

29 (1) information that supports the insurer's use of a credit
 30 score; and

31 (2) the insurer's credit scoring methodology.

32 (b) The commissioner may request from an insurer that uses
 33 credit information other than a credit score to provide to the
 34 commissioner information that supports the insurer's use of the
 35 credit information.

36 (c) An insurer shall make information requested by the
 37 commissioner under this section available for examination by the
 38 department at the office of the insurer.

39 (d) Information provided by an insurer under this section is
 40 confidential.

41 Sec. 15. (a) An insurer shall not use credit information as a
 42 pretext for discrimination against an insured or applicant that is

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1 based on the gender, race, nationality, or religion of the insured or
2 applicant.

3 (b) A credit scoring methodology may not be used by an insurer
4 if the credit scoring methodology incorporates the gender, race,
5 nationality, or religion of an insured or applicant.

6 Sec. 16. A willful violation of this chapter is an unfair and
7 deceptive act and practice in the business of insurance under
8 IC 27-4-1-4, as determined by the commissioner.

9 Sec. 17. An insurance producer licensed under IC 27-1-15.6 is
10 not liable in any action arising from the use of a credit score by an
11 insurer, provided that the insurance producer complies with the
12 insurer's procedures provided to the producer by the insurer
13 concerning the use of credit scores.

14 Sec. 18. This chapter is not intended to conflict with any
15 disclosure provisions of state law or the federal Truth in Lending
16 Act (15 U.S.C. 1601 et seq.).

17 SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.130-2002,
18 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2003]: Sec. 4. The following are hereby defined as unfair
20 methods of competition and unfair and deceptive acts and practices in
21 the business of insurance:

22 (1) Making, issuing, circulating, or causing to be made, issued, or
23 circulated, any estimate, illustration, circular, or statement:

24 (A) misrepresenting the terms of any policy issued or to be
25 issued or the benefits or advantages promised thereby or the
26 dividends or share of the surplus to be received thereon;

27 (B) making any false or misleading statement as to the
28 dividends or share of surplus previously paid on similar
29 policies;

30 (C) making any misleading representation or any
31 misrepresentation as to the financial condition of any insurer,
32 or as to the legal reserve system upon which any life insurer
33 operates;

34 (D) using any name or title of any policy or class of policies
35 misrepresenting the true nature thereof; or

36 (E) making any misrepresentation to any policyholder insured
37 in any company for the purpose of inducing or tending to
38 induce such policyholder to lapse, forfeit, or surrender his
39 insurance.

40 (2) Making, publishing, disseminating, circulating, or placing
41 before the public, or causing, directly or indirectly, to be made,
42 published, disseminated, circulated, or placed before the public,

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1 in a newspaper, magazine, or other publication, or in the form of
2 a notice, circular, pamphlet, letter, or poster, or over any radio or
3 television station, or in any other way, an advertisement,
4 announcement, or statement containing any assertion,
5 representation, or statement with respect to any person in the
6 conduct of his insurance business, which is untrue, deceptive, or
7 misleading.

8 (3) Making, publishing, disseminating, or circulating, directly or
9 indirectly, or aiding, abetting, or encouraging the making,
10 publishing, disseminating, or circulating of any oral or written
11 statement or any pamphlet, circular, article, or literature which is
12 false, or maliciously critical of or derogatory to the financial
13 condition of an insurer, and which is calculated to injure any
14 person engaged in the business of insurance.

15 (4) Entering into any agreement to commit, or individually or by
16 a concerted action committing any act of boycott, coercion, or
17 intimidation resulting or tending to result in unreasonable
18 restraint of, or a monopoly in, the business of insurance.

19 (5) Filing with any supervisory or other public official, or making,
20 publishing, disseminating, circulating, or delivering to any person,
21 or placing before the public, or causing directly or indirectly, to
22 be made, published, disseminated, circulated, delivered to any
23 person, or placed before the public, any false statement of
24 financial condition of an insurer with intent to deceive. Making
25 any false entry in any book, report, or statement of any insurer
26 with intent to deceive any agent or examiner lawfully appointed
27 to examine into its condition or into any of its affairs, or any
28 public official to which such insurer is required by law to report,
29 or which has authority by law to examine into its condition or into
30 any of its affairs, or, with like intent, willfully omitting to make a
31 true entry of any material fact pertaining to the business of such
32 insurer in any book, report, or statement of such insurer.

33 (6) Issuing or delivering or permitting agents, officers, or
34 employees to issue or deliver, agency company stock or other
35 capital stock, or benefit certificates or shares in any common law
36 corporation, or securities or any special or advisory board
37 contracts or other contracts of any kind promising returns and
38 profits as an inducement to insurance.

39 (7) Making or permitting any of the following:

40 (A) Unfair discrimination between individuals of the same
41 class and equal expectation of life in the rates or assessments
42 charged for any contract of life insurance or of life annuity or

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in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in

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1 limitation, life annuities, or agreement as to such contract or
 2 policy other than as plainly expressed in such contract or policy
 3 issued thereon, or paying or allowing, or giving or offering to pay,
 4 allow, or give, directly or indirectly, as inducement to such
 5 insurance, or annuity, any rebate of premiums payable on the
 6 contract, or any special favor or advantage in the dividends,
 7 savings, or other benefits thereon, or any valuable consideration
 8 or inducement whatever not specified in the contract or policy; or
 9 giving, or selling, or purchasing or offering to give, sell, or
 10 purchase as inducement to such insurance or annuity or in
 11 connection therewith, any stocks, bonds, or other securities of any
 12 insurance company or other corporation, association, limited
 13 liability company, or partnership, or any dividends, savings, or
 14 profits accrued thereon, or anything of value whatsoever not
 15 specified in the contract. Nothing in this subdivision and
 16 subdivision (7) shall be construed as including within the
 17 definition of discrimination or rebates any of the following
 18 practices:

19 (A) Paying bonuses to policyholders or otherwise abating their
 20 premiums in whole or in part out of surplus accumulated from
 21 nonparticipating insurance, so long as any such bonuses or
 22 abatement of premiums are fair and equitable to policyholders
 23 and for the best interests of the company and its policyholders.

24 (B) In the case of life insurance policies issued on the
 25 industrial debit plan, making allowance to policyholders who
 26 have continuously for a specified period made premium
 27 payments directly to an office of the insurer in an amount
 28 which fairly represents the saving in collection expense.

29 (C) Readjustment of the rate of premium for a group insurance
 30 policy based on the loss or expense experience thereunder, at
 31 the end of the first year or of any subsequent year of insurance
 32 thereunder, which may be made retroactive only for such
 33 policy year.

34 (D) Paying by an insurer or agent thereof duly licensed as such
 35 under the laws of this state of money, commission, or
 36 brokerage, or giving or allowing by an insurer or such licensed
 37 agent thereof anything of value, for or on account of the
 38 solicitation or negotiation of policies or other contracts of any
 39 kind or kinds, to a broker, agent, or solicitor duly licensed
 40 under the laws of this state, but such broker, agent, or solicitor
 41 receiving such consideration shall not pay, give, or allow
 42 credit for such consideration as received in whole or in part,

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directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

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- 1 (A) Insurance issued to credit unions or members of credit
 2 unions in connection with the purchase of shares in such credit
 3 unions.
 4 (B) Insurance employed as a means of guaranteeing the
 5 performance of goods and designed to benefit the purchasers
 6 or users of such goods.
 7 (C) Title insurance.
 8 (D) Insurance written in connection with an indebtedness and
 9 intended as a means of repaying such indebtedness in the
 10 event of the death or disability of the insured.
 11 (E) Insurance provided by or through motorists service clubs
 12 or associations.
 13 (F) Insurance that is provided to the purchaser or holder of an
 14 air transportation ticket and that:
 15 (i) insures against death or nonfatal injury that occurs during
 16 the flight to which the ticket relates;
 17 (ii) insures against personal injury or property damage that
 18 occurs during travel to or from the airport in a common
 19 carrier immediately before or after the flight;
 20 (iii) insures against baggage loss during the flight to which
 21 the ticket relates; or
 22 (iv) insures against a flight cancellation to which the ticket
 23 relates.
 24 (14) Refusing, because of the for-profit status of a hospital or
 25 medical facility, to make payments otherwise required to be made
 26 under a contract or policy of insurance for charges incurred by an
 27 insured in such a for-profit hospital or other for-profit medical
 28 facility licensed by the state department of health.
 29 (15) Refusing to insure an individual, refusing to continue to issue
 30 insurance to an individual, limiting the amount, extent, or kind of
 31 coverage available to an individual, or charging an individual a
 32 different rate for the same coverage, solely because of that
 33 individual's blindness or partial blindness, except where the
 34 refusal, limitation, or rate differential is based on sound actuarial
 35 principles or is related to actual or reasonably anticipated
 36 experience.
 37 (16) Committing or performing, with such frequency as to
 38 indicate a general practice, unfair claim settlement practices (as
 39 defined in section 4.5 of this chapter).
 40 (17) Between policy renewal dates, unilaterally canceling a
 41 individual's coverage under an individual or group health
 42 insurance policy solely because of the individual's medical or

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- 1 physical condition.
- 2 (18) Using a policy form or rider that would permit a cancellation
- 3 of coverage as described in subdivision (17).
- 4 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
- 5 vehicle insurance rates.
- 6 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 7 to interest rate guarantees.
- 8 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 9 coverage for victims of abuse.
- 10 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 11 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
- 12 insurance producers.
- 13 (24) Violating IC 27-1-38 concerning depository institutions.
- 14 **(25) Violating IC 27-2-21 concerning discrimination in**
- 15 **underwriting of property and casualty insurance.**

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